

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TQ DELTA, LLC,	§	
	§	
<i>Plaintiff,</i>	§	Civil Action No. 2:21-cv-310-JRG
v.	§	JURY TRIAL DEMANDED
COMMSCOPE HOLDING	§	
COMPANY, INC., COMMSCOPE	§	LEAD CASE
INC., ARRIS INTERNATIONAL	§	
LIMITED, ARRIS GLOBAL LTD.,	§	
ARRIS US HOLDINGS, INC., ARRIS	§	
SOLUTIONS, INC., ARRIS	§	
TECHNOLOGY, INC., and ARRIS	§	
ENTERPRISES, LLC,	§	
<i>Defendants.</i>	§	
	§	

TQ DELTA, LLC,	§	
	§	
<i>Plaintiff,</i>	§	Civil Action No. 2:21-cv-309-JRG
v.	§	JURY TRIAL DEMANDED
NOKIA CORP., NOKIA SOLUTIONS	§	
AND NETWORKS OY, and NOKIA	§	MEMBER CASE
OF AMERICA CORP.	§	
<i>Defendants.</i>	§	
	§	

**PLAINTIFF/COUNTER-DEFENDANT TQ DELTA, LLC'S ANSWER TO THE
COMMSCOPE DEFENDANTS' COUNTERCLAIMS**

Plaintiff/Counter-Defendant TQ Delta, LLC (“TQ Delta”) hereby answers Defendants/Counter-Plaintiffs CommScope Holding Company, Inc., CommScope Inc., ARRIS US Holdings, Inc., ARRIS Solutions, Inc., ARRIS Technology, Inc., and ARRIS Enterprises, LLC

(collectively, “CommScope”) Counterclaims. (Dkt. No. 17, at 25–41). TQ Delta sets forth by reference paragraphs 1 through 212 of its Original Complaint (Dkt. No. 1) in their entirety as if fully set forth herein.

PARTIES

1. TQ Delta admits that CommScope Holding Company, Inc. is a Delaware corporation. TQ Delta lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph 1.¹.

2. TQ Delta admits that CommScope Inc. is a Delaware corporation. TQ Delta lacks knowledge or information sufficient to form a belief about the truth of the remainder the allegations in paragraph 2.

3. TQ Delta admits that ARRIS US Holdings, Inc. is a Delaware corporation. TQ Delta lacks knowledge or information sufficient to form a belief about the truth of the remainder the allegations in paragraph 3.

4. TQ Delta admits that ARRIS Solutions, Inc. is a Delaware corporation. TQ Delta lacks knowledge or information sufficient to form a belief about the truth of the remainder the allegations in paragraph 4.

5. TQ Delta admits that ARRIS Technology, Inc. is a Delaware corporation. TQ Delta lacks knowledge or information sufficient to form a belief about the truth of the remainder the allegations in paragraph 5.

¹ The paragraph numbering of this answer beings at 1, matching the paragraph numbering used in CommScope’s Counterclaims. The section titles are, similarly, the titles used by CommScope’s Counterclaims and are reproduced only for that reason.

6. TQ Delta admits that ARRIS Enterprises LLC is a Delaware corporation. TQ Delta lacks knowledge or information sufficient to form a belief about the truth of the remainder the allegations in paragraph 6.

7. TQ Delta admits the allegation in paragraph 7.

JURISDICTION

8. TQ Delta admits that CommScope's Counterclaims purport to be an action for declaratory relief, but denies that the Counterclaims have merit. TQ Delta admits that this Court has subject matter jurisdiction over actions for declaratory relief under 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202. TQ Delta denies the remainder of the allegations.

9. TQ Delta admits the allegation in paragraph 9.

10. TQ Delta admits that venue is proper as to CommScope's Counterclaims under 28 U.S.C. §§ 1391(c) and 1400(b). To the extent that CommScope is alleging that venue in this District is improper, TQ Delta denies this allegation and asserts that CommScope has waived its right to object to improper venue under Federal Rule of Civil Procedure 12(b)(3). Further, to the extent that CommScope is alleging that venue should be changed under 28 U.S.C. § 1404(a), TQ Delta denies this allegation and asserts that CommScope has waived its right to move for a transfer of venue under § 28 U.S.C § 1404(a) by failing to timely make such a motion.

11. TQ Delta admits the allegation in paragraph 11.

12. TQ Delta admits that CommScope's Answer and Affirmative Defenses to TQ Delta's Complaint purports to deny TQ Delta's claims of infringement of the patents asserted in the Complaint and purports to allege that such patents are invalid, but TQ Delta denies that CommScope's Answer and Affirmative Defenses have merit.

13. TQ Delta admits that an actual and justiciable controversy exists between it and CommScope with respect to the infringement and validity of the patents asserted in the Complaint

FACTUAL ALLEGATIONS

14. TQ Delta admits the allegations in paragraph 14.

15. TQ Delta admits the allegation in paragraph 15.

16. TQ Delta admits that CommScope manufactures customer equipment that complies with certain ITU DSL-related standards.

17. TQ Delta admits that the ITU's Common Patent Policy states that, in certain circumstances, "the Recommendation | Deliverable shall not include provisions depending on the patent." TQ Delta also admits that the ITU's Common Patent Policy states that, in certain circumstances, "the patent holder has to provide a written statement . . . using the appropriate 'Patent Statement and Licensing Declaration' form."² TQ Delta denies the remainder of the allegations in paragraph 17.

18. TQ Delta denies the allegations in paragraph 18.

19. TQ Delta denies the allegation in paragraph 19.

20. TQ Delta admits that, prior to filing its Complaint, it and CommScope engaged in negotiations to license TQ Delta Patents subject to the PSLDs to CommScope. The remainder of the allegations in paragraph 20 are denied.

21. TQ Delta admits that it filed its Complaint against CommScope in the United States District Court for the Eastern District of Texas on August 13, 2021. The remainder of the allegations in paragraph 21 are denied.

² See <https://www.itu.int/en/ITU-T/ipr/Pages/policy.aspx>.

22. TQ Delta admits that in 2013 it previously filed a complaint initiating the case *TQ Delta, LLC v. 2Wire, Inc.*, No. 1:13-cv-01835-RGA (D. Del.). TQ Delta lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph 22.

23. TQ Delta denies the allegations in paragraph 23.

COUNTERCLAIM I
(Declaratory Judgement of Noninfringement of the '881 Patent)

24. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

25. TQ Delta denies the allegations in paragraph 25.

26. TQ Delta denies the allegations in paragraph 26.

COUNTERCLAIM II
(Declaratory Judgement of Noninfringement of the '686 Patent)

27. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

28. TQ Delta denies the allegations in paragraph 28.

29. TQ Delta denies the allegations in paragraph 29.

COUNTERCLAIM III
(Declaratory Judgement of Noninfringement of the '882 Patent)

30. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

31. TQ Delta denies the allegations in paragraph 31.

32. TQ Delta denies the allegations in paragraph 32.

COUNTERCLAIM IV
(Declaratory Judgement of Noninfringement of the '008 Patent)

33. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

34. TQ Delta denies the allegations in paragraph 34.

35. TQ Delta denies the allegations in paragraph 35.

COUNTERCLAIM V
(Declaratory Judgement of Noninfringement of the '048 Patent)

36. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

37. TQ Delta denies the allegations in paragraph 37.

38. TQ Delta denies the allegations in paragraph 38.

COUNTERCLAIM VI
(Declaratory Judgement of Noninfringement of the '835 Patent)

39. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

40. TQ Delta denies the allegations in paragraph 40.

41. TQ Delta denies the allegations in paragraph 41.

COUNTERCLAIM VII
(Declaratory Judgement of Noninfringement of the '411 Patent)

42. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

43. TQ Delta denies the allegations in paragraph 43.

44. TQ Delta denies the allegations in paragraph 44.

COUNTERCLAIM VIII
(Declaratory Judgement of Noninfringement of the '988 Patent)

45. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

46. TQ Delta denies the allegations in paragraph 46.

47. TQ Delta denies the allegations in paragraph 47.

COUNTERCLAIM IX
(Declaratory Judgement of Noninfringement of the '348 Patent)

48. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

49. TQ Delta denies the allegations in paragraph 49.

50. TQ Delta denies the allegations in paragraph 50.

COUNTERCLAIM X
(Declaratory Judgement of Noninfringement of the '354 Patent)

51. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

52. TQ Delta denies the allegations in paragraph 52.

53. TQ Delta denies the allegations in paragraph 53.

COUNTERCLAIM XI
(Declaratory Judgement of Noninfringement of the '055 Patent)

54. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

55. TQ Delta denies the allegations in paragraph 55.

56. TQ Delta denies the allegations in paragraph 56.

COUNTERCLAIM XII
(Declaratory Judgement of Noninfringement of the '112 Patent)

57. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

58. TQ Delta denies the allegations in paragraph 58.

59. TQ Delta denies the allegations in paragraph 59.

COUNTERCLAIM XIII
(Declaratory Judgement of Noninfringement of the '809 Patent)

60. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

61. TQ Delta denies the allegations in paragraph 61.

62. TQ Delta denies the allegations in paragraph 62.

COUNTERCLAIM XIV
(Declaratory Judgement of Invalidity of the '881 Patent)

63. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

64. TQ Delta denies the allegations in paragraph 64.

COUNTERCLAIM XV
(Declaratory Judgement of Invalidity of the '686 Patent)

65. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

66. TQ Delta denies the allegations in paragraph 66.

COUNTERCLAIM XVI
(Declaratory Judgement of Invalidity of the '882 Patent)

67. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

68. TQ Delta denies the allegations in paragraph 68.

COUNTERCLAIM XVII
(Declaratory Judgement of Invalidity of the '008 Patent)

69. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

70. TQ Delta denies the allegations in paragraph 70.

COUNTERCLAIM XVIII
(Declaratory Judgement of Invalidity of the '048 Patent)

71. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

72. TQ Delta denies the allegations in paragraph 72.

COUNTERCLAIM XIX
(Declaratory Judgement of Invalidity of the '835 Patent)

73. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

74. TQ Delta denies the allegations in paragraph 74.

COUNTERCLAIM XX
(Declaratory Judgement of Invalidity of the '411 Patent)

75. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

76. TQ Delta denies the allegations in paragraph 76.

COUNTERCLAIM XXI
(Declaratory Judgement of Invalidity of the '988 Patent)

77. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

78. TQ Delta denies the allegations in paragraph 78.

COUNTERCLAIM XXII
(Declaratory Judgement of Invalidity of the '348 Patent)

79. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

80. TQ Delta denies the allegations in paragraph 80.

COUNTERCLAIM XXIII
(Declaratory Judgement of Invalidity of the '354 Patent)

81. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

82. TQ Delta denies the allegations in paragraph 82.

COUNTERCLAIM XXIV
(Declaratory Judgement of Invalidity of the '055 Patent)

83. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

84. TQ Delta denies the allegations in paragraph 84.

COUNTERCLAIM XXV
(Declaratory Judgement of Invalidity of the '112 Patent)

85. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

86. TQ Delta denies the allegations in paragraph 86.

COUNTERCLAIM XXVI
(Declaratory Judgement of Invalidity of the '809 Patent)

87. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

88. TQ Delta denies the allegations in paragraph 88.

COUNTERCLAIM XXVII
(Breach of Contract)

89. TQ Delta repeats and incorporates by reference its responses in the above paragraphs of this Answer to the CommScope Defendants' Counterclaims as if set forth fully herein.

90. TQ Delta denies the allegations in paragraph 90.

91. TQ Delta denies the allegations in paragraph 91.

92. TQ Delta denies the allegations in paragraph 92.

93. TQ Delta denies the allegations in paragraph 93.

94. TQ Delta denies the allegations in paragraph 94.

95. TQ Delta denies the allegations in paragraph 95.

96. TQ Delta denies the allegations in paragraph 96.

97. TQ Delta denies the allegations in paragraph 97.

98. TQ Delta denies the allegations in paragraph 98.

99. TQ Delta denies the allegations in paragraph 99.

100. TQ Delta denies the allegations in paragraph 100.

PRAYER FOR RELIEF

The section of the CommScope Defendants' Counterclaims entitled "Prayer for Relief" sets forth the statement of relief requested by the CommScope Defendants, to which no response is required. Should the Court deem a response is required, TQ Delta denies that the CommScope Defendants are entitled to any of the relief sought in this section and requests that the Court deny all relief sought by CommScope in its entirety and with prejudice.

DEMAND FOR JURY TRIAL

TQ Delta joins the CommScope Defendants' demand for jury trial.

PRAYER FOR RELIEF FROM THE COMMSCOPE DEFENDANTS' COUNTERCLAIMS

WHEREFORE, Plaintiff/Counter-Defendant TQ Delta prays for entry of judgment in its favor and against Defendant/Counter-Plaintiff as follows:

A. For a judgment dismissing Defendants/Counter-Plaintiffs CommScope's counterclaims with prejudice; and

B. That Plaintiff/Counter-Defendant TQ Delta be awarded such other and further relief as the Court may deem just and proper, including all relief requested in Plaintiff's Complaint.

Dated: November 12, 2021

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF
TQ DELTA, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), any counsel of record not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by email on November 12, 2021.

/s/ Christian Hurt
Christian Hurt